had invested $650,000 and had used the most approved apparatus to prevent any nuisance. The injury to the plaintiff was slight and as the injunction would compel the closing of the works it was not granted. In all such cases the courts enforce the plaintiff to seek his remedy in damages. Insolvency will not prevent the right to an injunction, however, where the injury is irreparable. *Kesner et al.* v. *Miesch,* 90 Ill. App. 437; *Dingby* v. *Buckner,* — Cal. —, 104 Pac. 478. The equities are strongly in favor of the defendant in the principal case.

MASTER AND SERVANT—DISCHARGE—COMPENSATION.—In consideration of two per cent. commission on all sales made, plaintiff agreed to act as salesman for the defendant from Jan. 1, 1905, until June 30, 1906. He was to receive $300 monthly, and at the end of twelve months the balance of the commission earned during that period; and at the expiration of the contract the additional commission earned from Jan. 1 to June 30, was to be paid. The employment and right to commission was conditioned upon the due performance by the plaintiff of all the terms of the agreement. On Jan. 1, 1906, $275.30 was due plaintiff as such additional commission. He did not draw this or seek to draw it, but continued to draw $300 per month. During the month of May following plaintiff entered a prolonged spree causing at least one sale to be lost, and on May 23, 1906, he was discharged. In this action for $275.30, the commissions due Jan. 1, 1906, it is *held,* that a prolonged incapacity caused by drunkenness justified a discharge; and since the contract was entire there could be no recovery. *Atkinson* v. *Heine* (1909), 119 N. Y. Supp. 122.

The law is well settled that the master is justified in discharging the servant for drunkenness. *Smith* v. *St. Paul R. Co.,* 60 Minn, 330; *McCormick* v. *Demary,* 10 Neb. 515; *Gonsolis* v. *Gearhart,* 31 Mo. 585. It is clear from the facts that on Jan. 1, 1906, plaintiff could have sued upon the contract and recovered the amount already earned; by the terms of the contract the commission was then due and payable, and it hardly seems clear that this right can be defeated by anything which may subsequently occur. In *Lambert* v. *King,* 12 La. Ann. 662, and *Lindner* v. *Cape Brewery & Ice Company,* 131 Mo. App. 680, cases involving similar facts, it was held that there could be a recovery on the contract for the amount earned before the discharge. The doctrine established by these cases will perhaps be preferred to the rule announced by the New York court. Some courts hold that there can be a recovery on a quantum meruit when the servant is discharged for cause: *Massey* v. *Taylor,* 45 Tenn. 447; *Lawrence* v. *Gullifer,* 38 Me. 532. *Huntington* v. *Claffin,* 38 N. Y. 182, announces the rule that a servant discharged for cause is in the same position as if he had voluntarily abandoned the contract, and there can be no recovery.

MASTER AND SERVANT—FELLOW SERVANT OR VICE PRINCIPAL.—Plaintiff, a servant of defendant, working in its logging camp, was standing near defendant's cable line and transmitting signals from the engineer to the workman in the forest. Some ten or twelve feet from plaintiff the cable was held in place by a snatch block fastened to a stump by a swamp hook. Because

not securely fastened the swamp hook gave way, causing the cable or hook to strike and injure plaintiff. *Held,* that plaintiff could recover for the injuries on the ground that the hook tender and signal man were not fellow servants. *Hoseth* v. *Preston Mill Co.* (1909), — Wash. —, 104 Pac. 612.

In holding that the hook tender is the alter ego of the company and not a fellow servant of plaintiff, the opinion states that the question has been decided in Washington and cites *Sullivan* v. *Wood & Co.,* 43 Wash. 259; *Goldthorpe* v. *Clark-Nickerson Lumber Co.,* 31 Wash. 467. In the first case the injury was caused by the use of a wedge which had been selected by the superintendent and adjusted by the foreman in charge of the work. In the second, the injury resulted from an effort to remove a belt that plaintiff had been directed by the millwright in charge, to take away. And in neither case was the present question involved. It is clear that the hook tender had no supervision over the work, and that he was engaged in the same general business as plaintiff, and was working for the same company. The only ground upon which he may be deemed a vice principal is that he is performing nondelegable duties. In this view the case is supported by *Eingartner* v. *Illinois Steel Co.,* 94 Wis. 70, 68 N. W. 664. Other courts hold that such duties are delegable and that there can be no recovery because of the fellow servant doctrine. *Beesley* v. *Wheeler,* 103 Mich. 196, 61 N. W. 658; *Sofield* v. *Guggenheim,* 64 N. J. L. 605, 46 Atl. 711; *Buck* v. *N. J. Zinc Co.,* 204 Pa. 132, 52 Atl. 740; *Stringham* v. *Hilton,* 111 N. Y. 188. Though decidedly against the weight of authority, it seems that on principle the Washington Court has announced a sound doctrine.

MUNICIPAL CORPORATIONS—INTOXICATING LIQUORS—DISCRETION OF COMMON COUNCIL IN LICENSING SALOONS.—An ordinance designated places where saloons might be licensed, omitting the place where petitioner had conducted his saloon because the city council considered that there were too many saloons in that locality, and because petitioner had been convicted of violating the liquor law, and because the arrangement of his place made violation of the law easy. On application for mandamus to compel the common council to approve petitioner's bond as a liquor dealer, *held,* that the ordinance is valid and the writ must be denied. *Mills* v. *Common Council of City of Ludington* (1909), — Mich. —, 122 N. W. 1082.

The only case cited in support of the opinion is that of *Sherlock* v. *Stuart et al.,* 96 Mich. 193, 55 N. W. 845, 21 L. R. A. 580. In that case the court held that the officers who have power to grant such licenses may use their sound discretion in respect to the granting of each individual license. To this decision there are two long dissenting opinions. The Wyoming Court in *State* v. *City of Cheyenne,* 7 Wyo. 417, 52 Pac. 975, 40 L. R. A. 710, follows the rule laid down in *Sherlock* v. *Stuart et al,* supra, and says that the cases cited in the dissenting opinion do not sustain the dissent. So in *State* v. *Common Council of City of Northfield,* 94 Minn. 81, 101 N. W. 1063, the court held, that where the act incorporating the city vested the council thereof with full power "to restrain, control, and regulate the selling and disposing of spirituous, vinous, malt, fermented, or intoxicating liquors within the said